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9 November 1954

MEMORANDUM FOR: Deputy Director (Plans)
Deputy Director (Intelligence)
Deputy Director (Administration)
Director of Training
Assistant Director for Communications

SUBJECT: Annual Premium Pay Differentials

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1. Public Law 763, 83rd Congress, amended the Federal Employees' Pay Act of 1945, effective 7 November 1954, to provide for payment of premium compensation at an annual rate to employees serving in certain types of positions. Broadly speaking, employees in positions requiring "standby duty", such as firefighters, and those in positions in which the hours of work cannot be controlled administratively and which require substantial amounts of irregular overtime, holiday and night work, such as FBI agents, may receive allowances up to 25 per cent and 15 per cent, respectively, of their base annual compensation up to the minimum GS-9 salary level.

2. The Civil Service Commission has published a revised pay regulation governing administration of these provisions of the Act. The standards for determining whether a given position meets the requirements for an allowance and establishing the rate within the 15 per cent and 25 per cent limitations have been extracted and are attached for your information and guidance.

3. Pending the development of appropriate regulatory material for inclusion in Agency Regulation the following procedure has been adopted to expedite implementation of these provisions within the Agency:

a. The addressees will be responsible for reviewing positions under their respective jurisdictions in terms of the standards set forth in the attachments. (This responsibility may be delegated to immediately subordinate officials at the discretion of the addressees; extra copies of this memorandum are included for this purpose.)

b. If they consider that they do have positions under their jurisdiction for which an annual rate may properly be established, they will prepare a memorandum for each such position, or group of positions, furnishing the following information:

(1) Positive identification of the position(s) by title, grade, position number, and organization (Office/Staff or Division/Branch).

(2) For investigator-type positions: full information as to the frequency and duration of irregular, unscheduled, overtime duty and the night and holiday duty required; the nature of the work which prevents hours of duty from being controlled administratively; the necessity for the employee's being generally responsible for recognizing, without supervision, circumstances which require him to remain on duty; and any other pertinent conditions.

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(3) For positions involving standby duty: full information as to scheduled hours of duty; the number of hours of actual work required and how it is distributed over the time on duty; the number of hours in a standby status required and the extent to which the employee's whereabouts and activities are restricted during standby periods; and any other pertinent conditions.

(4) A statement as to whether the positions involve these requirements at all times or, if applicable, the frequency or duration of their occurrence.

c. Requests for the establishment of an annual rate of compensation will be forwarded, in triplicate, to the Assistant Director for Personnel. He will coordinate each such request with the Comptroller to determine whether all of the required conditions are met and the appropriate rate to be applied.

d. The original requests will be returned to the initiating office following action by the Assistant Director for Personnel; one conformed copy will be retained in the Office of Personnel and one in the Office of the Comptroller.

4. Instructions for subsequent action authorizing payments to individuals will be developed and furnished with approved requests. Tentatively, these authorizations will be processed on Standard Form 52, Request for Personnel Actions; however, the volume of approved requests may require some special procedure.

5. Rates may be established at the beginning of any pay period following their approval. However, it is suggested that you initiate requests based on your current requirements as rapidly as possible.

6. You are also reminded that the cost of paying these annual rates must be absorbed within current budgetary allowances.


Harrison G. Reynolds
Assistant Director for Personnel

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Attachments

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FEDERAL EMPLOYEES' PAY REGULATIONS

Special Provisions for Certain Types of Work--Positions Requiring Employees to Remain at Their Stations During Long Duty Hours, a Substantial Part of Which is Standby

§25.251 Authorization of additional annual compensation. (a) Premium pay on an annual basis may be paid to any officer or employee in a position requiring him to regularly remain at, or within the confines of, his station during longer than ordinary periods of duty, a substantial part of which consists of remaining in a standby status rather than performing work. Such additional compensation on an annual basis takes the place of any other premium compensation prescribed in this subpart. It may not exceed 25 percent of such part of the rate of basic compensation as does not exceed the minimum rate for grade GS-9 in the Classification Act of 1949, as amended.

(b) This permissive authority extends to any department, any judicial or legislative agency to which this section applies (see §25.201 (b)), and to the municipal government of the District of Columbia. Payment of such additional compensation on an annual basis is subject to the approval of the Civil Service Commission. The Commission has approved payment of such additional compensation at rates and under conditions specified by this subpart. Departments and other agencies are responsible for individual actions within the provisions of this subpart.

§25.252 General restrictions. (a) No employee shall be paid additional compensation under §25.251 if such compensation, over a period of time appropriate to reflect the full cycle of his duties and the full range of conditions in his position, would either:

(1) Be less than the premium pay which would otherwise be payable under other sections of this subpart for the hours of actual work customarily required in his position, excluding standby time during which no work is performed, or

(2) Exceed the premium pay which would otherwise be payable under other sections of this subpart for the total hours of duty required in his position, including standby time during which no work is performed.

§25.253 Bases for determining positions for which additional compensation under §25.251 is authorized. (a) The requirement of a position that the employee "regularly remain at or within the confines of his station" must meet all the following conditions:

(1) The requirement must be definite and the employee must be officially ordered to remain at his station. The employee's remaining at his station must not be merely voluntary, desirable, or a result of geographic isolation, or solely because the employee lives on the grounds.

(2) The hours during which the requirement is operative must be included in the employee's regularly scheduled hours of duty and his duty tours must be established on a regularly recurring basis over a substantial period of time, generally at least a few months. The requirement must not be occasional, irregular, or for a brief period.

(3) The requirement must be associated with the regularly assigned duties of the employee's job, either as a continuation of his regular work which includes standby time, or as a requirement to stand by at his post to perform his regularly assigned duties if the necessity arises.

(b) "At or within the confines of his station" means one of the following:

(1) At an employee's regular duty station.

(2) In quarters provided by the Government, which are not the employee's ordinary living quarters, and which are specifically provided for use of personnel required to stand by in readiness to perform actual work when the need arises or when called.

(3) In an employee's living quarters, when designated by the department as his duty station and when his whereabouts is narrowly limited and his activities are substantially restricted. This condition exists only during periods when an employee is required to hold himself in a state of readiness to answer calls for his services. This limitation on an employee's whereabouts and activities is distinguished from the limitation placed on an employee who is subject to call outside his regular hours of duty but may leave his quarters, provided he arranges for someone else to respond to calls or leaves a telephone number by which he can be reached should his services be required.

(c) "Longer than ordinary periods of duty" are more than 40 hours a week.

(d) "A substantial part of which consists of remaining in a standby status rather than performing work" refers to the entire tour of duty. This condition is met when either:

(1) A substantial part of the whole period of duty, at least 25 percent, is spent in a standby status which occurs throughout the entire tour, or

(2) If certain hours of the tour of duty are regularly devoted to actual work and others are spent in a standby status, that part of the period of duty devoted to standing by is at least 25 percent of the entire period of duty, or

(3) An employee has a regular 40-hour basic workweek requiring full-time performance of actual work and is required, in addition, to perform standby duty on certain nights, or to perform standby duty on certain days not included in his basic workweek.

(e) An employee is "in a standby status" only at times when he is not required to perform actual work and is free to eat, sleep, read, listen to the radio, or engage in other similar pursuits. An employee is performing actual work, rather than being in a standby status, when his full attention is devoted to his work, even though the nature of his work does not require constant

activity (for example, a guard on duty at his post and a technician continuously observing instruments are engaged in the actual work of their positions). Actual work includes both work performed during regular work periods and work performed when called out during periods ordinarily spent in a standby status.

FEDERAL EMPLOYEES' PAY REGULATIONS

Special Provisions for Certain Types of Work--Positions in Which the Hours of Duty Cannot be Controlled Administratively, and Which Require Substantial Amounts of Irregular, Unscheduled, Overtime, Night, and Holiday Duty

§25.261 Authorization of additional annual compensation. (a) Premium pay on an annual basis may be paid to any officer or employee in a position in which the hours of duty cannot be controlled administratively, and which requires substantial amounts of irregular, unscheduled overtime duty and duty at night and on holidays with the officer or employee generally being responsible for recognizing, without supervision, circumstances which require him to remain on duty. Such additional compensation on an annual basis takes the place of any other premium compensation prescribed in this subpart except premium compensation for regularly scheduled overtime duty. It may not exceed 15 percent of such part of the rate of basic compensation as does not exceed the minimum rate for grade GS-9 in the Classification Act of 1949, as amended.

(b) This permissive authority extends to any department, any judicial or legislative agency to which this section applies (see §25.201 (b)), and to the municipal government of the District of Columbia. Payment of such additional compensation on an annual basis is subject to the approval of the Civil Service Commission. The Commission has approved payment of such additional compensation at the rate and under conditions specified in this subpart. Departments and other agencies are responsible for individual actions within the provisions of this subpart.

§25.262 General restriction. No employee shall be paid additional annual compensation under §25.261 if such compensation would, over a period of time appropriate to reflect the full cycle of his duties and the full range of conditions in his position, exceed the premium pays which would otherwise be payable under other sections of this subpart for the hours of duty required in his position, exclusive of regularly scheduled overtime duty.

§25.263 Bases for determining positions for which additional compensation under §25.261 is authorized. (a) By the nature of the work of such positions, "the hours of duty cannot be controlled administratively."

(1) One typical job situation in which the hours of duty cannot be controlled administratively: (i) The hours of duty of an investigator of criminal activities are governed by what criminals do and when they do it. He is often required to perform such duties as shadowing suspects, working incognito among those under suspicion, searching for evidence, meeting informers, making arrests, and interviewing persons having knowledge of criminal or alleged criminal activities. His hours on duty and place of work depend on the behavior of the criminals or suspected criminals and cannot be controlled administratively.

(ii) In such a situation, hours of duty cannot be controlled by such administrative devices as hiring additional personnel; rescheduling the hours of duty (which can be done when, for example, a type of work occurs primarily at certain times of the day); or granting compensatory time off duty to offset overtime hours required.

(b) In order to satisfactorily discharge the duties of such positions, employees are required to perform substantial amounts of "irregular, unscheduled, overtime duty, and duty at night and on holidays."

(1) A substantial amount of irregular, unscheduled, overtime duty means an average of at least six hours of such overtime duty a week.

(2) The irregular, unscheduled, overtime duty is a continual requirement, generally averaging more than once a week.

(3) There must be a definite basis for anticipating that the irregular, unscheduled, overtime duty will continue over an appropriate period of time with a duration and frequency sufficient to meet the requirements under subparagraphs (1) and (2) of this paragraph and that night and holiday duty will be performed from time to time.

(c) The employee generally is "responsible for recognizing, without supervision, circumstances which require him to remain on duty."

(1) The responsibility for an employee remaining on duty when required by circumstances must be a definite, official, and special requirement of his position.

(2) The employee must remain on duty not merely because it is desirable, but because of compelling reasons inherently related to continuance of his duties, and of such a nature that failure to carry on would constitute negligence.

(3) "Recognition of circumstances" does not include such clear-cut instances as, for example, when an employee must continue working because a relief fails to report as scheduled.

(4) (i) "Circumstances which require an employee to remain on duty" means requiring the employee to continue on duty in continuation of a full daily tour, or that, after the end of the regular workday, the employee resumes duty in accordance with prearranged plans or an awaited event. Performance of only call-back overtime assignments, referred to in §25.222 (f) of this subpart, does not meet the requirement.

(ii) The requirement is that the employee remain on duty in continuation of a full, regularly scheduled, daily tour of duty. The employee has no choice as to when or where he may perform the work. This differs from a situation in which an employee has the option of taking work home or doing it at the office; or doing it in continuation of his regular hours of duty or later in the evening. It also differs from a situation in which an employee has such latitude in his working hours, as when in a travel status,

that he may decide to begin work later in the morning and continue working later at night to better accomplish a given objective.